

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

**ZURICH AMERICAN INSURANCE COMPANY,
a New York corporation,**

Plaintiff,

v.

**Civil Action No. 3:06-CV-70
(Bailey)**

**JODY LEE LUCAS and JANE DOE,
Administratrix of the Estate of Lyle J. Knipple,**

Defendants.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

On this day, the above-styled matter came before the Court for consideration of plaintiff's First Motion for Partial Summary Judgment [Doc. No. 68]. Upon careful consideration of the plaintiff's Motion and memorandum in support thereof, and the responses thereto, it is the opinion of this Court that the plaintiff's Motion [Doc. No. 68] be **DENIED**.

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). The court is to draw any permissible inference from the underlying facts in the light most favorable to the non-movant, See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986) (citing *United States v. Diebold Inc.*, 369 U.S. 645,

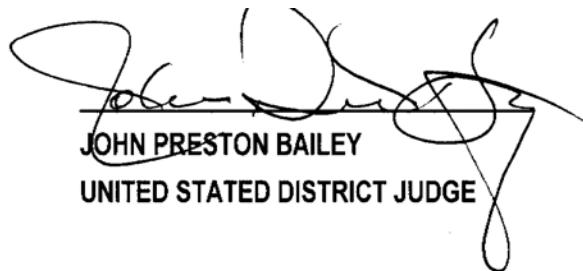
655 (1962)). Further, the non-movant must offer some “concrete evidence from which a reasonable juror could return a verdict in his or her favor,” **Anderson**, 477 U.S. at 256, evidence that amounts to more than a mere “scintilla of evidence” in support of his position. See **id.** at 252.

Upon review of the parties’ pleadings, it is clear that genuine issues of material fact are in dispute. Viewing the facts in the light most favorable to the defendants, it is apparent that the defendants have raised factual issues surrounding the instructions given to Mr. Lucas regarding the nature and scope of his use of the company van, as well as factual questions regarding the interpretation of the company handbook. Accordingly, the plaintiff’s First Motion for Partial Summary Judgment [Doc. No. 68] is **DENIED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

DATED: December 14, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE